



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

News Media Information 202 / 418-0500
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DA 13-1741

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NOTICE OF REQUEST FOR ACCESS TO CARRIER DATA FILED IN THE NUMBERING RESOURCE UTILIZATION AND FORECAST (NRUF) REPORTS

PLEADING CYCLE ESTABLISHED

CC Docket No. 99-200
CC Docket No. 95-116

Comment Date: August 19, 2013

The United States Department of Justice, Antitrust Division (the Department), “is investigating the proposed acquisition by AT&T, Inc. of Leap Wireless International, Inc.”¹ For the purpose of assisting in that investigation, the Department has requested access to information contained in the December 2012 Numbering Resource Utilization and Forecast (NRUF) reports (and any updates that become available during the pendency of the investigation) filed by wireless telecommunications carriers, by carrier and by rate center, and to disaggregated, carrier-specific local number portability (LNP) data related to wireless telecommunications carriers, by carrier and by rate center, from November 2012 forward.

Section 251 of the Communications Act, 47 U.S.C. § 251, gives the Commission jurisdiction over the North American Numbering Plan (NANP) and related telephone numbering issues. In order to better monitor the way numbering resources are used within the NANP and efficiently allocate NANP resources, the Commission requires telecommunications carriers to provide the Commission with utilization reports of their current inventory of telephone numbers and a five-year forecast of their numbering resource requirements.² LNP data is collected by the LNP Administrator, and provided to the Commission. The Commission has recognized that disaggregated, carrier-specific forecast and utilization data should be treated as confidential and should be exempt from public disclosure under 5 U.S.C. § 552(b)(4).³

¹ Letter from Scott Scheele, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, to Julie Veach, Chief, Wireline Competition Bureau, Federal Communications Commission, CC Docket Nos. 99-200, 95-116 at 1 (filed Aug. 8, 2013).

² See *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7578–79, para. 5 (2000).

³ *Id.* at 7607, para. 78.

In general, the Commission may share information it has collected with another government agency under 44 U.S.C. § 3510. Section 3510 further provides that all provisions of law that relate to the unlawful disclosure of information apply to the employees of the agency to which the information is released. Although the Commission's regulations provide that proprietary and commercially sensitive information will be withheld from public disclosure, subject to the public's right to seek disclosure under the Freedom of Information Act and implementing regulations, 5 U.S.C. § 552, 47 C.F.R. § 0.457(d), 0.459(d), the Commission may disclose to other federal agencies records that have been submitted to the Commission in confidence upon another agency's request pursuant to 47 C.F.R. § 0.442(d).

The Department states in its request that its policy is to protect the confidentiality of sensitive information and to prevent competitively sensitive information from being shared among competitors. As stated in the request, sensitive information includes "confidential business information," which means trade secrets or other commercial or financial information (a) in which the company has a proprietary interest or which the company received from another entity under an obligation to maintain the confidentiality of such information, and (b) which the company has in good faith designated as confidential. The Department further states that sensitive information will be used by it only for a legitimate law enforcement purpose and that it is the Department's policy not to disclose sensitive information unless it is required by law or is necessary to further a legitimate law enforcement purpose. In its request, the Department states that in its experience, the need to disclose sensitive material occurs rarely. The Department maintains that, although its policy is not to use sensitive information in complaints or accompanying court papers unnecessarily, it cannot provide an absolute assurance that sensitive information will not be included in such documents. The Department states, however, that, if it is necessary to disclose any confidential business information in court filings, its policy is to notify the affected party as soon as is reasonably practicable, to file such information under seal, advise the court that the information has been designated as confidential, and to make reasonable efforts to limit disclosure of the information to the court and outside counsel for the other parties to the litigation until the affected party has had a reasonable opportunity to appear before the court and the court has ruled on any request by the affected party.

The Department further states that, if a request is made under the Freedom of Information Act or any other provision of law for the disclosure of confidential business information, it is the Department's policy to assert all applicable exemptions from disclosure, including those exemptions set forth in 5 U.S.C. §§ 552(b)(4), (b)(7)(A), and (b)(7)(D) (to the extent applicable).⁴ Further, the Department states that its policy is to use its best efforts to provide concerned parties with such notice as is practicable prior to the release of any confidential business information to any third party who requests it under any provision of law other than the Freedom of Information Act. The Department also states that, if confidential business information becomes the subject of discovery in any litigation to which the Department is a party, it is the Department's policy to use its best efforts to ensure that a protective order applicable to the information is entered, and to not voluntarily provide the information until concerned parties have had a reasonable opportunity to review and comment on the protective order and to apply to the court for further protection. The Department states that its policy is to not oppose a court appearance by concerned parties for this purpose.

Pursuant to the Commission's regulations in 47 C.F.R. § 0.442, affected parties have 10 days from the date of this notice to oppose disclosure of NRUF and LNP data to the Department of Justice. If the Commission receives no opposition from affected parties within 10 days of this notice, the

⁴ See also *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 880 (D.C. Cir.), *cert. denied*, 113 S. Ct. 1579 (1992) (protection of voluntarily provided information).

Commission will disclose the information requested above to the Justice Department. If disclosure is opposed, the procedures set forth in 47 C.F.R. § 0.442 shall apply.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Parties must also send a courtesy copy of their filing to Gary Remondino, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 5-C143, Washington, D.C. 20554. His e-mail address is gary.remondino@fcc.gov; his telephone number is (202) 418-2298.

The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation

⁵ 47 C.F.R. §§ 1.1200 *et seq.*

must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For further information, please contact John Visclosky, Competition Policy Division, Wireline Competition Bureau, john.visclosky@fcc.gov, (202) 418-0825.

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